

RULE DEVELOPMENT PLAN

**Chapter 173-95A WAC:
Uses and Limitations of the Centennial Clean Water Fund**

AND

**Chapter 173-98 WAC:
Uses and Limitations of the Water Pollution Control Revolving Fund**

A.O. #:

Program: Water Quality

Approved by:	Signature:	Date:
Rule Writer		
Public Information Officer		
Program Manager		
Agency Rules Coordinator		

Rule Development Plan Guidelines

1. GENERAL INFORMATION

A. Need and Authority

Is this a ☐ new or ☒ change to an existing WAC

What is the purpose of your rule?

The Department of Ecology (Ecology) Water Quality Program proposes to amend two rules: *Chapter 173-95A WAC, Uses and Limitations of the Centennial Clean Water Fund*, (Centennial) and *Chapter 173-98 WAC, Uses and Limitations of the Water Pollution Control Revolving Fund (SRF)*.

Centennial: In 1986, the Washington State Legislature established the Water Quality Account in Chapter 71.46 RCW. Centennial is an account within the Water Quality Account. Ecology provides grants and loans to local governments and tribes for water pollution control facilities and water pollution control activities designed to prevent and control water pollution to our state's surface and ground water. Ecology's Water Quality Program has administered the Centennial Program since its inception.

SRF: The United States Congress established the SRF program as part of the Clean Water Act Amendments in 1987. The EPA awards annual capitalization grants to Ecology who administers the fund in the form of loans to local governments and tribes. The fund provides low-cost financing or refinancing for projects such as publicly owned wastewater treatment facilities, nonpoint source pollution control projects, and comprehensive estuary conservation and management programs.

The Centennial and SRF rules were last updated in 2000, with the goal of improving Ecology's flexibility in providing effective and efficient financial assistance to local governments. Now, five years later, the rule again needs updating and clarification to respond to changing needs of local governments and the need to define and ensure perpetuity of the SRF fund.

The goal of this rule amendment is to continue integrating the funding programs to enhance efficiency, coordination, and transparency, provide clear direction on policy, and to respond to the changing water quality funding needs of our clients in local and tribal government.

The simultaneous amendments to the Centennial and SRF rule would have the added benefit of increased coordination and consistency between the two rules.

This Rule Development Plan describes the rule amendment process. Questions concerning the subject matter discussed should be directed to Cindy Price, Water Quality Program, (360) 407-7132 or Dan Filip, Water Quality Program, (360) 407-6509.

On what statutory authority is your rule based? Is the statutory authority sufficient to develop a rule?¹

Chapter 90.50 RCW, Water Pollution Control Facilities—Federal Capitalization Grants, provides Ecology statutory authority for rule making for the SRF Program.

¹ E.O. 97-02

Many aspects of the management of the Centennial Clean Water Fund (Centennial) and the State Revolving Fund (SRF) have been addressed through rule, guidelines, and policy since 1988 and 1989 respectively.

Is the rule necessary to comply with the statutes that authorize it?²

The foundation for these funding programs is provided by statute, but the framework for the programs is provided by rule. The rule provides consistency and predictability for Ecology representatives, clients, and stakeholders.

The SRF was established by Congress in 1987 as a means to phase out the federal construction grant program for wastewater treatment facilities. In response to the new federal program, the Washington State Legislature created the SRF program in 1988 under Chapter 90.50A RCW, Water Pollution Control Facilities - Federal Capitalization Grants. The RCW, in part, required Ecology to establish a rule to implement the SRF program.

Ecology has operated the SRF and Centennial programs in coordination since their inception. Both programs are complex. Amending both rules would allow Ecology to enhance its nationally recognized integrated funding approach. It would also allow the program to meet requirements under the Clean Water Act regarding SRF perpetuity.

In addition, the Joint Legislative Audit and Review Committee (JLARC), through the Legislature, required a more formal outcome-based funding strategy via a statute addition (RCW 70.146.[090]), and JLARC recommended that Ecology consider a minimum threshold for funding proposals.

Is there a federal rule that applies to your rule's subject matter? If yes, why does Ecology need to write a rule?

In response to the Clean Water Act Amendments of 1987, EPA is authorized to offer yearly capitalized grants to Washington State to establish a self-sustaining loan program—the SRF. The Clean Water Act requires Ecology to manage the fund in a way to ensure perpetuity. The Clean Water Act does not define perpetuity. One of Ecology's goals is to define perpetuity and embrace that decision in rule.

In addition, clients, stakeholders, Ecology staff, and members of the Water Quality Financial Assistance Council have identified other areas of the Centennial and SRF rules that could be improved by clarifying or amending existing language to better reflect Legislative or statutory intent as well as evolving need of local governments and tribes.

B. Issues

Describe the various anticipated issues involved in the development of this rule.

The program anticipates rule development to have an impact on loan and grant recipients, including towns, cities, counties, conservation districts, tribes, state institutions of higher education, and not-for-profit agencies. Other stakeholders interested in Water Quality funding include the Public Works Trust Fund Board, Puget Sound Action Team and the Department of Health. While many of the proposed updates should benefit clients and stakeholder, some may be controversial.

² E.O. 97-02

Five major categories have been identified for clarification or revision.

1) Fund Structure

➤ SRF Interest Rates

A Clean Water Act (CWA) requirement is that the SRF be managed to ensure fund perpetuity and that interest rates charged cannot diminish the long-term health of the fund. However, the CWA does not define perpetuity. Ecology contracted with Alan Dashen and Associates with the goal of providing options for defining perpetuity. These options will be presented and considered during rulemaking and may result in increased loan interest rates. The effect of higher rates may be seen at the state, local government, and citizen levels in several ways:

- Adjusting interest rates for perpetuity may create a level of uncertainty.
- Higher interest rates could increase the cost for tribes and local governments to complete water quality improvement projects.
- Higher interest rates could increase loan repayment amounts.
- Higher interest rates could increase sewer user fees.

Higher interest rates should ensure long-term perpetuity for the SRF, which may prove beneficial to state, local government, and citizens as the fund will better keep pace with inflation. This should result in the continued long-term funding of high priority water quality infrastructure; thereby improving local economies. It is expected that SRF loans will remain more affordable compared to banks or municipal bonds.

➤ Hardship Provisions, Including Grants and Loans

Current rules provide for hardship funding that is comprised of loan and grant combinations from the SRF and Centennial Program respectively. The Water Quality Program strives to meet the goals of reducing user fees in the case of financial hardship. This priority is evidenced in the distribution of the SRF loan portfolio, which shows over 22 percent of the fund being loaned out to hardship communities at zero percent interest. These loans have companion hardship grants from the Centennial Program. With limited grant dollars provided by the Legislature, meeting hardship needs becomes increasingly difficult.

The program is considering updating or revising hardship revisions in the following ways:

- Consider offering loan companion grants for hardship communities for the funding of on-site septic system replacement or repairs, which are not eligible for grant funding at this time. Directing more grant money to on-site septic repair or replacement may reduce funding levels for other types of projects.
- Reassess the current sewer user fee threshold of 1.5 percent of median household income. Does this percentage still reflect current conditions? The sewer user fee threshold is a measure used to determine hardship-funding eligibility. If the threshold is lowered it may result in more grant funding to hardship communities. If the threshold is raised the opposite is true.
- Evaluate provisions for hardship communities struggling to meet the stormwater requirements under their National Pollutant Discharge Elimination System permit.

2) Allocation of Funds *Supported by Statute* and Funding List Cutoff Threshold

Current rules provisions contain fund allocations for two project categories, which results in a split of available funding of 2/3 for Hardship Communities Facilities Construction Projects and 1/3 for Activities Projects.

While the program is not recommending a change to the current allocation formula, the rule language will be open for comment and suggestions. The result of changing this allocation could result in the following issues:

- Reduced funding in one category depending on the direction of the shift

For example, if the allocation was changed to a 50/50 split, the amount available to hardship communities would decrease and the amount available to nonpoint would increase. This would likely be controversial.

➤ Funding List Cutoff Threshold (Recommended by JLARC)

Currently the rule does not include a minimum point level cut off in the rating and ranking of project applications.

Setting a minimum point level may result in some projects not receiving Ecology funding.

- Such a threshold may result in the inability (at least temporarily) to obligate funds appropriated by the Legislature for high priority water quality improvement and protection projects.

3) General *Eligibility*

The program is recommending that rule language regarding loan and grant eligibilities be updated, clarified, and made more transparent. The goal is to reduce misinterpretation and confusion and enhance consistency for more effective financial management of integrated funding strategy.

- Issues may arise as these clarifications and updated are discussed. This topic can include a broad range of interpretation and the potential for controversy exists.

4) New Initiatives

Alternative Contracting/Service Agreements (AC/SA Pilot Rule) is an option in which a facilities project is not required to use the traditional three-step process in order to be eligible for funding. Usually, a facilities project must complete each step in a series before it is eligible for funding for subsequent steps. For example, step one must be completed before step two can be funded. The AC/SA option allows design and construction to be achieved concurrently.

Currently, the AC/SA option does not provide for project time limits, timely use of funds (readiness to proceed), or funding ceiling amounts.

Issues regarding updates and adoption of the AC/SA Pilot Rule include:

- A recipient may have less time to complete the project.
- A recipient may be required to proceed with the project in a specified timeframe.

- Setting a maximum ceiling amount may limit the use of the AC/SA option.

Adopting or updating these provisions would allow other high priority projects to proceed, as well as facilitate a more efficient turnaround of SRF loan funds. It would also ensure diversification of the SRF portfolio.

➤ Outcome Funding

Outcome funding is the emphasis on environmental results to ensure that the money invested through loan and grant programs leads to the greatest possible environmental benefit. Ecology will include outcome funding language in its rule consistent with Joint Legislative Review Committee (JLARC) and Legislative direction. Possible issues include:

- Increased reporting requirements may be placed on the grant and loan recipient.
- Some reporting may be required after the financial assistance agreement has expired.
- Some reporting requirements may be at the expense of the loan or grant recipient.
- Some loan or grant recipients may not have adequate resources to conduct follow-up assessments.

Embracing the outcome funding strategy in rule should solidify the current process and ensure the collection of quality data for use in required reports to the Legislature.

5) General Housekeeping

This will involve applying “Plain Talk” principles to the rule and making clerical corrections, which should help Ecology staff, clients, and stakeholders better find topics and understand content.

Name of the Assistant Attorney General assisting with this process: Ronald Lavigne, ATG

C. Advisory Groups

Do you foresee the need for some form of an Advisory Group(s)? If so, please describe what role this group, or groups, will have in your rule-making process.

Ecology will use its advisory group, the Financial Assistance Council (FAC), to assist in the rule development process. Ecology convened the Council in 1995 to help steer the various water quality loan and grant programs to better respond to the emerging needs of Washington's communities. Staff already briefed the FAC on the proposed rule making effort and will use the Council to get early and continuing input from a variety of stakeholders. The Council includes representatives of a variety of local governments, tribal interests, special districts, state and federal agencies, and interest groups.

In addition, EPA, the Washington State Dept. of Community, Trade, and Economic Development, the Washington State Conservation Commission, the Washington State Dept. of Health, the Washington State Dept. of Transportation, and the Puget Sound Action Team sit on the Council. Ecology staff will also invite the Council members to any workshops and hearings planned for the rule changes.

D. Additional Resources (e.g., facilitation costs, technical assistance, economic analysis, SEPA)

Amendment of the rule does not require going through SEPA because “standards” are not being proposed (see chapter 197-11-704(2)(b)(i) WAC). Therefore, it is considered categorically exempt.

Do you anticipate the need to acquire additional resources outside of your program’s current budget funds?

The Water Quality Program expects this process to take approximately 9-12 months. The rule making process is a component of the job duties of the staff involved. The program has added one State Revolving Fund Planner project position through the end of the biennium to handle additional workload

E. Timeline:

Action	Target Date	Scheduled on:	Complete
Planning Phase			
RAD-SMT Briefing	Sept. 2, 2005	Sept 2, 2005	9/2/05
RDP-Signed by Agency Rules Coordinator	Sept. 7 or Sept. 21		
PIO-Pre CR-101 meeting (4 weeks prior to filing CR-101)	Before SMT Briefing	9/1/05	9/1/05
CR-101 Filed (DS/Scoping Notice filed in SEPA register, if required)	Sept. 21, 2005	On Schedule	
Drafting/Proposal Phase			
Workshops (if needed)	Sept - February	Tentative October	
PIO-Pre CR-102 meeting (4 weeks prior to filing CR-102)	January 24, 2007		
Important pre meeting before next step Draft Rule to OTS (3 weeks prior to CR-102 filing)	January 31, 2007		
CR-102 Filed (SBEIS, Draft DEIS/DNS, preliminary CBA if required)	February 21, 2007		
CR-102 Published—deadlines critical after this step 180 days	March 7, 2007		
Public Comment Phase			
First Hearing Date	March 28, 2007		
Last Hearing Date	March 29, 2007		
Close of Comment Period (7 days after last Hearing)	April 6, 2007		
Adoption Phase			
PIO-Pre CR-103 meeting (4 weeks prior to filing CR-103)	May 31, 2007		

Action	Target Date	Scheduled on:	Complete
Final Rule to OTS (3 weeks prior to filing CR-103)	June 7, 2007		
Adoption Date	June 28, 2007		
CR-103 Filed (Implementation Plan, CES,)	June 28, 2007		
180 day cut-off for filing your CR-103	September 3, 2007		
Effective Date	July 29, 2007		
Implementation Phase			
Submit Rule File to the Rule's Unit	Sept. 1, 2007		

2. ALTERNATIVES

A. Negotiated Rule Making

Ecology is directed by federal and state statutes that direct decision making, which is not conducive to the provision in negotiated rulemaking in which representatives become an equal partner in the decision making with Ecology staff.

B. Pilot Rule Making

Adoption of a previous pilot rule, Alternative Contracting/Service Agreements (AC/AS), will be considered during this process. The SRF and Centennial rule were last updated five years ago. Ecology staff and loan and grant recipient needs have changed or become better defined. Full rulemaking is necessary to reflect these changes.

C. Other Alternatives

Many of the provisions that the program would like to consider should make the rule more transparent and predictable. Managing a complex funding program requires systematically reevaluating rules in response to changing needs

3. COMMUNICATION STRATEGY OUTLINE

The communication and information sharing strategy will be directed at primary clients and stakeholders, including local governments, special districts, tribal governments, and state agencies. Mailing list of all entities eligible for funding and other interested parties such as environmental groups and stakeholder associations will be utilized. Announcements of workshops and hearings to all these parties will be sent. The announcements will include a Focus sheet with information about the rules and about proposed changes.

Ecology staff will work closely with the Ecology Program Information Officer to devise a communication strategy to address difficult questions.

Four initial workshops and two or more subsequent public hearings will be held. If there is evidence of demand for more workshops during the development process, Ecology will respond accordingly. Ecology's Water Quality Web site will also be used to share information.

Environmental Community

The environmental community, which includes loan and grant recipients, other state agencies, and Ecology headquarters and regional staff, will be given the same information and opportunities to have meaningful input as the regulated community. Information will also be shared at funding application workshops, recipient trainings, infrastructure conferences, and other venues as they become available.

General Public

The general public will be given the same opportunities to have meaningful input as the regulated community.

Ecology will use available publications, other available newsletters, or similar media for informing the public about our rule making plans.

External Implementation

Ecology will publicize the rule changes through the annual funding Guidelines, through annual funding workshops, Internet pages, and direct contact with the many stakeholders Ecology communicates with on a daily basis.

Internal Implementation

Water Quality Program staff are responsible for rule implementation. Rule-writing staff will provide written material to guide implementation and hold informational meetings to assist other staff at headquarters and in the regions in understanding the rule changes. Training, in conjunction with our annual funding workshops, is also possible.

Reporting Requirements

Centennial Program: Ecology sends a biennial report to the legislature on the financial aspects of the agency's various water quality financial assistance programs, including the Centennial Program and the SRF, according to statutory direction and a formatting agreement with the legislative staff.

SRF: Ecology's agreement with the EPA includes requirements for Ecology to report annually to the EPA on the SRF, which includes an annual operating agreement.

JLARC: Annual reports are submitted through the Office of Financial Management (OFM) to the JLARC regarding outcome funding strategies.

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Potential products and activities – with timeline:

Informal Workshop Notice and Focus Sheet	September 10, 2005
Informal Workshops—West side	October 12,13, 2005
Informal Workshops—East side	October 19, 20, 2005
Communication Strategy including media announcement by PIO	September/October, 2005
Request Articles in newsletters, such as Association of Washington Cities and Counties	September, 2005
Notification to form Advisory subcommittees	September 8, 2005
Advisory subcommittee meetings	December/January, 2005
Web page focus sheet	September/October, 2005
Announcements at statewide conferences such as the Infrastructure Coordinating Council and	October and November 2005